

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42275, Sept. 19, 1983, unless otherwise noted.

23.000 Scope of part.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment through pollution control, energy conservation, identification of hazardous material, and use of recovered materials.

[54 FR 4968, Jan. 31, 1989]

Subpart 23.1—Pollution Control and Clean Air and Water

23.101 Applicability.

This subpart does not apply to contracts at or below the simplified acquisition threshold or to the use of facilities outside the United States. (*United*

States, as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)

[48 FR 42275, Sept. 19, 1983, as amended at 60 FR 34758, July 3, 1995]

23.102 Authorities.

(a) Clean Air Act (42 U.S.C. 7401 *et seq.*).

(b) Clean Water Act (33 U.S.C. 1251 *et seq.*).

(c) Executive Order 11738, September 10, 1973 (38 FR 25161, September 12, 1973).

(d) Environmental Protection Agency (EPA) regulations (40 CFR part 32).

[48 FR 42275, Sept. 19, 1983, as amended at 62 FR 236, Jan. 2, 1997]

23.103 Policy.

(a) It is the Government's policy to improve environmental quality. Accordingly, executive agencies shall conduct their acquisition activities in a manner that will result in effective enforcement of the Clean Air Act (the *Air Act*) and the Clean Water Act (the *Water Act*).

(b) Except as provided in 23.104, executive agencies shall not enter into, renew, or extend contracts with firms proposing to use facilities listed by EPA (40 CFR part 15) as violating facilities under the Air Act or the Water Act.

23.104 Exemptions.

(a) Except as provided in paragraphs (b) and (c) of this section, contracts and subcontracts are not subject to the restriction in 23.103(b) if they are (1) \$100,000 or under; (2) for indefinite quantities and the contracting officer believes that the amount ordered in any year under the contract will not exceed \$100,000; or (3) for commercial items.

(b) If the facility to be used is on the EPA List of Violating Facilities for a *conviction* under the Air Act or the Water Act, the exemption in paragraph (a) above does *not* apply.

(c) The agency head may exempt any contract, subcontract, or class of contracts or subcontracts from the re-

quirement in 23.103(b) for 1 year when it is in the paramount interest of the United States to do so.

(1) Before granting a class exemption, the agency head shall consult with the EPA Administrator or the Administrator's designee.

(2) The agency head shall notify the EPA Administrator, or a designee, as soon as practical after granting an individual exemption. The notification shall describe the purpose of the contract and explain why the paramount interest of the United States required the exemption.

[48 FR 42275, Sept. 19, 1983, as amended at 53 FR 27464, July 20, 1988; 60 FR 48248, Sept. 18, 1995]

23.105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the solicitation provision at 52.223-1, Clean Air and Water Certification, in solicitations containing the clause at 52.223-2, Clean Air and Water (see paragraph (b) following).

(b) The contracting officer shall insert the clause at 52.223-2, Clean Air and Water, in solicitations and contracts to which this subpart applies (see 23.101), if—

(1) The contract is expected to exceed \$100,000;

(2) The contracting officer believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or

(3) A facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or Water Act (33 U.S.C. 1319(c)) and is listed by EPA as a violating facility; and

(4) The acquisition is not otherwise exempt under 23.104.

23.106 Delaying award.

(a) If an otherwise successful offeror informs the contracting officer that EPA is considering listing a facility proposed for contract performance (see the provision at 52.223-1, Clean Air and Water Certification), the contracting officer shall promptly notify the EPA Administrator or a designee, in writing, that the offeror is being considered for award.